

CITY OF LOS ANGELES
CALIFORNIA



ANTONIO R. VILLARAIGOSA
MAYOR

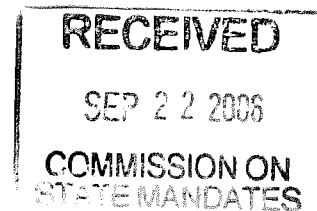
ASSISTANT
CITY ADMINISTRATIVE OFFICERS

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RAYMOND P. CIRANNA
ROYCE A. MENKUS
ELLEN F. SANDT

September 20, 2006

0160-00031-0001

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



Dear Ms. Higashi:

**CITY OF LOS ANGELES RESPONSE TO DRAFT STAFF ANALYSIS
Peace Officer Procedural Bill Of Rights**

Claim nos. CSM-4499 and 05-RL-4499-01
05-PGA-18, 05-PGA-19, 05-PGA-20, 05-PGA-21, and 05-PGA-22
Government Code sections 3300 through 3310

Interested Party, the City of Los Angeles (City), submits the following in response to the Commission on State Mandates Draft Staff Analysis regarding proposed amendments to the Peace Officer Procedural Bill of Rights (POBOR) Parameters and Guidelines.

1. Reimbursable Activities

The Staff supports the proposal by the State Controller's Office (SCO) to add language regarding the use of time studies for task-repetitive activities. While the City welcomes the Commission-sanctioned use of time studies, the City also cautions the Commission to be proactive in the drafting of specific language for the use of time studies. The City's prior experience with the SCO and its own POBOR time study lead to issues far beyond those which the time studies are supposed to solve. At the heart of the debate was the failure of the SCO to provide a solid time study plan review upon which a reliable time study could be built leading to frustration for all involved. Leaving the interpretation of general time study language to the vagaries of the SCO will simply raise more issues and result in future Incorrect Reduction Claims for resolution by the Commission.

2. Administrative Activities

The Staff supports the changes proposed by the SCO to the administrative activities. The City concurs with the position stated by the City of Sacramento in that the changes regarding the updating of the case status are too narrow. Not only must POBOR cases be tracked for procedural status in order to make sure that all actions are taken within the time period allowed by POBOR, but also existing statutes now require files to be maintained governing the POBOR matter itself.

Staff argues that there is no need to update the cases regarding timelines as those timelines are the result of subsequent legislation. The City asserts that the new legislation is irrelevant as to the issue of updating POBOR cases. The need to keep the investigation file updated was clearly and specifically part of the original POBOR legislation and the statement of decision and should not be unduly limited such that the reimbursement fails to match the extent of the task.

3. Interrogations

The Staff supports the changes submitted by the SCO. The City supports the position articulated by the City of Sacramento and the County of San Bernardino in that the proposed changes are much too narrowly drawn.

The City disagrees substantially and believes that the limitations sought to be imposed by the SCO are not in keeping with the testimony at the initial hearing, the SOD or Ps and Gs. At the initial hearing and the reconsideration hearing, Dee Contreras from the City of Sacramento spoke at length about the fact that POBOR requires an officer, prior to being interrogated, be advised of the nature of the investigation and the witnesses against the officer. This is the hallmark of a POBOR case. As such, the case requires substantial advance preparation prior to the investigation of any officer who will be charged with a disciplinary matter, or could be charged. The reason is that officers, who may only be witnesses or supervisors and who are not presently the subject of an investigation, could become part of the investigation if it is determined that they had failed to act or acted in contravention to the requirements of their position. Thus, every officer that is to be interrogated must be presumed to be entitled to their POBOR rights. Failing that, anything gleaned from the investigation may not be used should the officer be found in dereliction of his or her duty. Thus, the questions and scope of the interrogation must be determined in detail prior to the commencement of any interrogation. This requirement is much like the need to comply with Fourth Amendment search and seizure procedures. To overlook this requirement or to discount its importance is a manifest failure to understand the practical application of the POBOR program.

Moreover, even if the subject of the investigation is a civilian, this does not obviate the fact that POBOR rights may attach to the officer being questioned, if he or she did not act appropriately with regard to the civilian.

In addition, the time spent by the interrogating officer should be reimbursed due to the unique nature of the investigation as set forth above.

Finally, Staff has overlooked the fact that an officer being interrogated during work hours does not eliminate the requirement for reimbursement. The Parameters and Guidelines specifically allow for overtime because it is generally not allowed as a reimbursable activity. The Parameters and Guidelines also allow for straight time reimbursement. The SCO is interpreting the fact that overtime is specifically mentioned and straight time is not as an exclusion of straight time. This was not contemplated by the statement of decision which is the source document for the Parameters and Guidelines and the ultimate decision of the Commission.

4. Reasonable Reimbursement Methodology (RRM)

Staff dismisses all RRM proposals as submitted for failure to comply with law in that they do not prove that the rate reflects the performance of activities in a cost-efficient manner. While there is no doubt that the State would not relish supporting wasteful spending on the part of the agencies, it begs the question: Can any RRM be proved to have been based upon activities performed in a cost-efficient manner? Staff failed to seek further direction from the Commission on how to define that term to the satisfaction of the Commission. Without further guidance either by the Commission or its Staff, those who would propose an RRM are reduced to speculation. Such delays do not serve the interests of the Commission, its calendar, or the claiming agencies.

The City joins The County of San Bernardino in supporting the RRM proposed by the California State Association of Counties (CSAC). Despite the fact that Staff found fault with the dollar amount proposed by CSAC, the City believes that a cost-per-officer approach is the best methodology and should be adopted by the Commission at its hearing with direction to Staff and an invitation to interested parties to work together to achieve a dollar amount to satisfy the Commission.

Sincerely,



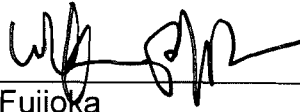
William T Fujioka
City Administrative Officer

WTF:ECL:01070025a

CERTIFICATION

I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and correct, except as to those matters stated upon information and belief and as to those matters, I believe them to be true.

Executed this 21st day of September, 2006, at Los Angeles, California, by:



William T Fujioka
City Administrative Officer
City of Los Angeles



PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On September 22, 2006, I served:

RESPONSE TO DRAFT STAFF ANALYSIS

Claim nos. CSM-4499 and 05-RL-4499-01
05-PGA-18, 05-PGA-19, 05-PGA-20, 05-PGA-21, and 05-PGA-22
Government Code sections 3300 through 3310

Peace Officer Procedural Bill Of Rights

by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the United States mail at Clovis, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 22nd day of September, 2006, at Sacramento, California.



Nicole Koehler

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